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FILED
DISTRICT OF WYOMING
CHEYENNE

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CLERK
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF WYOMING

R.C.R., INC., a Wyoming)
Corporation; JON R. GRAY and)
MARTHA K. GRAY,)
Plaintiffs,)

vs.)

ROBERT E. DELINE and ANNABELLE)
M. DELINE; GARY L. PALMER and)
NANCY J. PALMER; KIRK COMPANY,)
a Texas Partnership; and THE)
BOARD OF COUNTY COMMISSIONERS)
OF CARBON COUNTY, WYOMING,)
ARTLIN ZEIGER, LINDA FLEMING,)
and LEE MEACHAM, in their)
official capacities as members)
of the Board of County)
Commissioners, Carbon County,)
Wyoming,)

Defendants.)

00CV 024 -J
Case No. _____

NOTICE OF REMOVAL

COME NOW the Defendants in the above-entitled matter,
the Board of County Commissioners of Carbon County,

Wyoming, and Artlin Zeiger, Linda Fleming, and Lee Meacham, in their official capacities ("Defendants," "the Board," or as individually identified), by and through their counsel, Richard Rideout, Esq., of the Law Offices of Richard Rideout, PC, Cheyenne, Wyoming, and pursuant to 28 U.S.C. §1446, Rule 81 of the Federal Rules of Civil Procedure ("Fed.R.Civ.P."), and Rule 81.1 of the Local Rules of the United States District Court for the District of Wyoming ("USDCLR"), hereby give Notice of the removal of this matter to the United States District Court for the District of Wyoming from State of Wyoming District Court, Second Judicial District, Carbon County, Wyoming, and in support of this Notice Of Removal, state and represent as follows.

1. The removing parties are Defendants in an action which was commenced by the filing of a Complaint in the District Court, Second Judicial District, Carbon County, Wyoming, Civil Action No. CV-00-0012, entitled "R.C.R., Inc., a Wyoming Corporation; Jon R. Gray and Martha K. Gray, Plaintiffs vs. Robert E. Deline and Annabelle M. Deline; Gary L. Palmer and Nancy J. Palmer; Kirk Company, a Texas Partnership, and the Board of County Commissioners, Carbon County, Wyoming, Artlin Zeiger, Linda Fleming, and Lee Meacham, in their official capacities, Defendants,

Civil Action No. CV-00-0012. The Complaint was filed on January 13, 2000.

2. The Complaint was served on the Board on January 18, 2000 and an answer or other responsive pleading has not, as yet, been filed. This Notice Of Removal is filed within 30 days from the date of service of the Complaint, as provided for in 28 U.S.C. §1446(b). Other than the Complaint, as of this date, the only other pleading in the State Court file is the Plaintiffs' Motion Peremptory Disqualification Of Judge and a Notice Of Hearing on the Plaintiffs' Motion. No further proceedings have occurred in the State District Court.

3. The Complaint sets forth a series of statements of fact in which the procedural history of the action is set forth and that, in summary, allege that the actions of the Board of County Commissioners, in the course of the establishment of a "Private Road" undertaken pursuant to Wyo. Stat. §§24-9-101, et seq., violated their civil rights, deprived them of procedural and substantive due process, deprived the Plaintiffs of the "equal protection ... of the law," constituted the "taking of private property without just compensation," and effected a deprivation of their civil rights. The Complaint specifically states that the conduct and actions of the

Board, "and the individual County Commissioners ... unconstitutionally deprived the Respondent and Jon R. Gray and Martha K. Gray [Plaintiffs] of their Federal Civil Rights in contravention of 42 USCS §1983." (Plaintiffs Complaint, paragraph 12(v)) (Material omitted and bracketed material added). The Complaint also generally alleges that the Wyoming Statutes at issue violate the Wyoming and United States Constitutions.

The balance of what appear to be the claims or causes of action set forth in the pleading in subheadings and are entitled "Unlawful Rule Making," "Failure To Include Necessary Parties," "Failure To Hear Evidence," and "Illegal Subdivision," and appear to in substance address the purported procedural or substantive defects of the hearing and the conduct of the Board rather than to attempt to frame a specific and separate legal or factual basis of recovery, and the factual allegations within these individual subheadings are replete with allegations that the conduct, action, or inaction of the Board operated to deprive the Plaintiffs of their constitutional rights.

This Court has original jurisdiction of the constitutional issues raised in the Complaint which are brought pursuant to the U.S. Const. amend. V and XIV and 42 U.S.C. §1983, by reason of and under 28 U.S.C. §1331

(federal question jurisdiction). This action is, therefore, removable to this Court pursuant to 28 U.S.C. §1441(b). The Court also has supplemental jurisdiction of the remaining claims, or causes of action, to the extent plead in the Complaint, under 28 U.S.C. §1367(a).

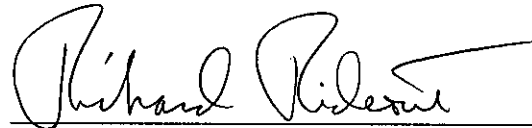
4. A copy of the Complaint is attached to this Notice Of Removal, together with a copy of the Motion For Peremptory Disqualification Of Judge and the Notice Of Setting on the Motion, marked as "Exhibits A, B, and C," respectively, and incorporated herein by this reference. These documents constitute the entire contents of the State District Court file in this case as of this date, other than summons and returns of summons as to these Defendants and to the Attorney General of the State of Wyoming (the Complaint challenges the constitutionality of the specified Wyoming Statutes and, by State law, the Attorney General must be served under such circumstances).

WHEREFORE, the Defendants respectfully request that the civil action now pending in the State of Wyoming District Court, Second Judicial District, Civil Action No. CV-00-0012, be removed to the United States District Court for the District of Wyoming.

Dated this 3rd day of February, 2000.

BOARD OF COUNTY COMMISSIONERS OF
CARBON COUNTY, WYOMING, ARTLIN
ZEIGER, LINDA FLEMING, and LEE
MEACHAM, in their official
capacities, Defendants

By:



RICHARD RIDEOUT, ESQ.
211 West 19th Street, Suite 100
P.O. Box 389
Cheyenne, Wyoming 82003-0389
(307) 632-1901

ATTORNEY FOR THE DEFENDANTS

CERTIFICATE OF SERVICE

I, RICHARD RIDEOUT, do hereby certify that a true and correct copy of the foregoing **NOTICE OF REMOVAL** was served by depositing the same in the United States mail, postage prepaid, this 3rd day of February, 2000, addressed as follows:

Kermit C. Brown, Esq.
Brown, Nagel, Waters & Hiser, LLC
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Laramie, Wyoming 82073-0971
(307) 745-7458

Hon. Gay Woodhouse
Attorney General of the State of Wyoming
Wyoming Attorney General's Office
123 Capitol Building
Cheyenne, Wyoming 82002



RICHARD RIDEOUT, ESQ.

IN THE DISTRICT COURT, SECOND JUDICIAL DISTRICT, IN AND
FOR CARBON COUNTY, WYOMING

R.C.R., INC., a Wyoming
Corporation; JON R. GRAY AND
MARTHA K. GRAY,

Plaintiffs,

vs.

ROBERT E. DELINE AND
ANNABELLE M. DELINE; GARY L.
PALMER AND NANCY J. PALMER;
KIRK COMPANY, A TEXAS
PARTNERSHIP; and BOARD OF
COUNTY COMMISSIONERS,
CARBON COUNTY, WYOMING,
ARTLIN ZEIGER, LINDA
FLEMING AND LEE MEACHAM in
their official capacities as members
of the Board of County
Commissioners, Carbon County,
Wyoming.

Defendants.

STATE OF WYOMING
COUNTY OF CARBON
FILED

JAN 13 2000

LINDY L. SCHMIDT
CLERK OF DISTRICT COURT

BY DEPUTY

Civil Action No. CV. 00-0012

SERVED 1/18/00

LINDA SMITH

Answer Due 2/8/00
Tickle 2/3/00

COMPLAINT

COME NOW the Plaintiffs, R.C.R., Inc., a Wyoming Corporation, Jon R. Gray and Martha K. Gray, by and through their attorneys Brown, Nagel, Waters & Hiser, LLC and for their Complaint against the Defendants do hereby state and allege as follows:

FACTS COMMON TO ALL ISSUES

1. Plaintiff R.C.R., Inc. is a Wyoming Corporation owning real property located within Carbon County, State of Wyoming. Plaintiffs Jon R. Gray and Martha K. Gray, husband and wife, are the sole shareholders of Plaintiff, R.C.R., Inc., and are the holders of an interest in real property located within Carbon County, State of Wyoming as set forth herein.

2. Defendants Robert E. Deline, Annabelle M. Deline, Gary L. Palmer, Nancy J. Palmer and Kirk Company are the owners of real property located in Carbon County, State of Wyoming.

3. Defendants Artlin Zeiger, Linda Fleming and Lee Meacham are the duly elected members of the Board of County Commissioners in and for Carbon County, State of Wyoming and are named in their official capacities as the Board of County Commissioners of Carbon County. Defendant Board of Commissioners is the entity established by Wyoming Statutes §24-9-101 et

EXHIBIT

seq. (hereinafter referred to as the "Wyoming Private Road Statutes") with the authority to establish and locate private roads and hear and assess damages in private road matters.

4. Jurisdiction and venue are proper in this Court.

5. On or about September 16, 1997, Defendants Robert E. Deline, Annabelle M. Deline, Gary L. Palmer, Nancy J. Palmer and Kirk Company filed a Petition for a Private Road (hereinafter "Private Road Action") naming R.C.R., Inc., and Alex J. Horst as Contestees/Respondents. Said Private Road Action was filed with the Board of Commissioners of Carbon County. Said action sought to establish a private road across land owned by the Contestees/Respondents located in Carbon County, State of Wyoming.

6. Plaintiffs Jon R. Gray and Martha K. Gray are the owners of an equitable interest in part of the land subject to the Private Road Action. As a result of that interest and in an attempt to protect said interest, on or about September 29, 1998, said Plaintiffs filed a Motion to Intervene as Respondents in the Private Road Action. Said Jon R. Gray and Martha K. Gray were not allowed to intervene on the basis that the Wyoming Private Road Statutes do not allow holders of equitable interest to participate in Private Road Actions.

7. A bank located in Carbon County, The Bank of Commerce, is the holder of a mortgage on a portion of the real property subject to the Private Road Action. Said bank was not made a party to the Private Road Action despite having a legally recognized interest in the real property subject to the Private Road Action. Said bank may have its rights jeopardized as a result of the Private Road Action.

8. During the course of the Private Road Action, numerous legal issues were raised and ruled upon. Questions as to the constitutionality of the Wyoming Private Road Statutes cannot be decided by the agency in the Private Road Action. See *Riedel v. Anderson*, 972 P.2d 586 (Wyo. 1999).

9. Defendant Board of Commissioners, acting through its Defendant members, determined that a private road would be located over land owned by Plaintiff R.C.R., Inc., as more fully set forth in its *Order Adopting Hearing Officer's Recommended Findings of Fact, Conclusions of Law and Order and Order Establishing a Private Road* entered December 7, 1999, a copy of which is attached hereto.

10. Plaintiffs R.C.R., Inc., Jon R. Gray and Martha K. Gray have been injured in fact by the actions of the Board of County Commissioners in allowing a private road to be established over real property which said Plaintiffs claim an interest in favor of the Contestants/Petitioners in the Private Road Action.

11. Plaintiffs R.C.R., Inc., Jon R. Gray and Martha K. Gray are persons harmed or affected by the application of the Wyoming Private Road

Statutes and who are entitled to a determination of the constitutionality and validity of W.S. §24-9-101 *et seq.* with a declaration of their rights based thereon.

CONSTITUTIONAL ISSUES

12. Wyoming Private Road Statutes §24-9-101 *et seq.* constitutes an unlawful exercise of power under both the Constitution of the State of Wyoming and the Constitution of the United States. Among the infirmities, the said statute is defective in one or more of the following ways:

- a. They deprive the Plaintiffs of their right to procedural due process as required under the 5th and 14th Amendments to the Constitution of the United States and Article I, Sections 6, 32 and 33 of the Constitution of the State of Wyoming.
- b. They deprive the Plaintiffs of their right to substantive due process as required under the 5th and 14th Amendments to the Constitution of the United States and Article I, Sections 6, 32 and 33 of the Constitution of the State of Wyoming.
- c. They deprive the Plaintiffs their right to equal protection under the law inasmuch as the statute gives the private road petitioner the exclusive right to the total exclusion of the Board of County Commissioners to determine the location of the private road to the detriment of Plaintiffs and without consideration of property owned by the private road petitioners or their alter ego. In addition, the statute unconstitutionally precludes the viewers from considering a private road across lands not designated by the private road petitioner.
- d. They deprive the Plaintiffs of their right to be heard on the issue of location.
- e. They deprive the Plaintiffs of their right to be heard on the issue of damages.
- f. To the extent damages may be awarded, the damages allowed under Wyoming law constitute a taking of private property without just compensation in that current Wyoming law fails to provide full and complete compensation to the owner of the servient estate. The statute fails to compensate the owner of the servient estate for damages sustained if the owners of the dominant estate make a change in the current use of their property.
- g. They are void and unconstitutional as they conflict with the Warranty Deed Statute, W.S. §34-2-103, wherein the grantor is required to warrant quiet and peaceful possession of the premises.

- h. They deprive the Plaintiffs of their right to have alternate routes across property not designated by the Petitioners included for consideration by the viewers.
- i. They deprive the viewers of the opportunity to designate alternative routes across the property of others which the Petitioner of the private road have not included in the petition.
- j. They deprive the Plaintiffs of the right to join other landowners in the Private Road Action and have the viewers consider locating a private road across lands owned by anyone other than property owners designated by the private road petitioner.
- k. They deprive persons or entities who hold legally recognized interests in the property other than "owners" from claiming damages to their interests in the real property. Said interests include those holders of mortgage or other security interests, equitable ownership interests and persons holding options to purchase the real property in question. In the case of the Private Road Action, the Bank of Commerce, referred to in paragraph 7, would be an example of such a person/entity.
- l. They constitute a taking of property for a private purpose and not a public purpose.
- m. They constitute a taking of property by enlarging a pre-existing easement held by Jon R. Gray and Martha K. Gray as recorded in book 863 at page 893 of the Carbon County records.
- n. Exceeds the Wyoming Constitution's allowance of taking for a way of necessity as set forth in Article 1, Section 32 of the Wyoming Constitution.
- o. The statutes are vague and ambiguous and/or constitute an unconstitutional taking of private property rights in that the statute allows the private road petitioners to expropriate more property rights than are necessary to serve the purpose of the private way. There is also no recognized method for terminating a private road once one is established and the alleged need for the road no longer exists.
- p. The statutes are unconstitutional in that they authorize private individuals to take more property rights than are reasonable, necessary and/or appropriate. Specifically, it allows the owners of the dominant estate to obtain a private road in perpetuity when the only right such owners allegedly need is some legally enforceable access until a public way becomes available.
- q. They violate the 5th and 14th Amendments by specifying an impermissible class to act as electors, limiting the class to freeholders and electors.

- r. They constitute an impermissible delegation of power and authority to the applicant.
 - s. They authorize an unlawful taking of property for private purpose in violation of the 5th and 14th Amendments to the United States Constitution. In addition, said statutes constitute an unconstitutional delegation of the powers of eminent domain, wherein the power is removed from the State and placed into the hands of private citizens.
 - t. They authorize an unlawful delegation of authority. A Private Road Action is not a contested case hearing. It is a legislative or argumentative type proceeding before the Board of County Commissioners solely for the purpose of helping them understand whether the legal criteria for proceeding exists, or does not exist. If they decide incorrectly on the facts before them, that decision is not a decision of record and is subject to consideration *de novo* by the District Court on challenge to the proceedings. The Wyoming Administrative Procedure Act does not apply to this proceeding. Consistent with the foregoing arguments, a Hearing Officer should not have been involved in these proceedings at all.
 - u. By making rulings on the admissibility of evidence and denying parties the right to intervene, the Hearing Officer unconstitutionally exceeded his authority in these proceedings. The Hearing Officer should have provided no more than procedural assistance to the Board of County Commissioners and is without authority to exclude evidence or exclude matters to be considered by the Board.
 - v. The action of the Board of County Commissioners, and of the individual County Commissioners and the Hearing Officer, in entering findings and making an order in accordance with the *Recommended Finding of Fact and Order*, unconstitutionally deprived Respondent, and Jon R. Gray and Martha K. Gray of their Federal Civil Rights in contravention of 42 USCS § 1983.
13. The foregoing have wrongfully and unconstitutionally deprived the Plaintiffs of the use of their land and/or their interests in such land.

UNLAWFUL RULE MAKING

14. On April 7, 1998, the Board of Commissioners adopted "Rules of Practice Governing Hearings and Contested Cases Before the Carbon County Board of Commissioners."
15. Said rules were illegally and/or improperly adopted in a manner contrary to applicable law by the Board of Commissioners and are therefore invalid and unenforceable. Specifically, said Rules of Practice were adopted

on an emergency basis without advance notice to the public when in fact no bona fide emergency existed.

16. Plaintiff R.C.R., Inc., in the Private Road Action, objected to the implementation of the said rules; however, the Board of Commissioners failed and/or refused to rescind said rules. Said rules deprive Plaintiffs substantive and procedural due process inasmuch as they impose a scheduling order which contains unreasonable deadlines and does not allow Plaintiffs an adequate opportunity to prepare its case, obtain necessary evidence and prepare a defense.

17. The Board of Commissioners have imposed the illegally and/or improperly adopted Rules of Procedure against the Plaintiff in the Private Road Action.

18. Plaintiffs have exhausted its administrative remedies and is entitled to an injunction and/or a Court decree determining and declaring that the adoption of the Rules of Practice was unlawful and that said Rules of Practice may not be imposed upon the Plaintiff in the Private Road Action.

FAILURE TO INCLUDE NECESSARY PARTIES

19. Jon R. Gray and Martha K. Gray claim an equitable or other property interest in the real property owned by Alex J. Horst who is a party to the Private Road Action. Others also claim ownership interests in the property, such as mortgagees, who also have not been included in the action.

20. The validity of said equitable or other property interest was disputed in that certain proceeding entitled *Alex J. Horst v. Jon R. Gray and Martha K. Gray*, Civil Action Number CV-97-0203 filed with the District Court, Second Judicial District, Carbon County, State of Wyoming.

21. As a result of their equitable or other property interest in the real property, Jon R. Gray and Martha K. Gray are necessary and proper parties in the Private Road Action. Jon R. Gray and Martha K. Gray have not been made parties to the Private Road Action.

22. Proceeding with the Private Road Action will cause permanent and irreparable injury to the equitable property interests held by Jon R. Gray and Martha K. Gray without due process of law.

23. Plaintiffs are entitled to an injunction prohibiting the Board of Commissioners from proceeding with the Private Road Action unless and until the real parties in interest have been identified and the proper and necessary parties are included.

FAILURE TO HEAR EVIDENCE

24. During the course of the proceedings, the Defendant Board of County Commissioners assigned a Hearing Officer who made rulings on the

admissibility of the evidence. Said rulings were made prior to and during formal hearings before the Board of County Commissioners.

25. In making his decisions, the Hearing Officer made rulings deciding what evidence would and would not be heard by the Board of Commissioners. Such rulings were adverse to the interests of Plaintiff R.C.R., Inc., and were made outside of the presence of the Board of Commissioners.

26. That at the time of the formal hearings before the Board of Commissioners, the Plaintiff R.C.R., Inc., was precluded from introducing evidence which it felt was necessary to be heard by the Board of Commissioners.

27. R.C.R., Inc., was denied its right to have an opportunity to be fully heard before the Board of Commissioners.

28. By allowing the Hearing Officer to make rulings on the admissibility of evidence, the Board of Commissioners abdicated its responsibility to hear the evidence and determine the admissibility thereof, thus depriving Plaintiff R.C.R., Inc. an opportunity to be fully heard.

ILLEGAL SUBDIVISION

29. Since 1972, Carbon County by and through its Board of County Commissioners have had in effect subdivision and zoning regulations which have been amended and modified over the years.

30. In 1980, the Defendant Board of County Commissioners approved an amended resolution adopting "Subdivision Regulations of Carbon County, Wyoming" (hereinafter "Subdivision Regulations"). Said Subdivision Regulations were made effective on March 5, 1980, and remain in effect at the present time.

31. The Subdivision Regulations impose a duty to enforce such regulations upon the Defendant Board of Commissioners as follows:

1.10.01 It shall be the duty of the Board, or its duly appointed representative, to enforce the provisions of these regulations. No final plat of a subdivision shall be approved by the Planning Commission and approved by the Board unless it conforms to the provisions of these regulations.

32. The said Subdivision Regulations set forth certain minimum requirements which must be met in order to obtain a subdivision permit, including, but not limited to, a requirement that there be adequate access to the subdivision.

33. In addition to laws applicable to subdivisions, Wyoming statutes also set forth requirements relating to platting. Wyoming Statute §34-12-102 requires that the original owners of any tract or parcel of land which divides

such land into three or more parcels to cause a plat to be filed. Wyoming Statute §34-12-103 requires such a plat to meet the approval of the Board of County Commissioners if the land in question is outside the boundaries of any city or town.

34. With the exception of property located within proper municipal corporation and by virtue of the applicable Wyoming statutes and the Subdivision Regulations, the Board of County Commissioners have a duty to enforce all platting and subdivision statutes and the Subdivision Regulations relating to land located within Carbon County, State of Wyoming.

35. Rainbow Canyon, Inc. is the owner of real property located within the jurisdiction of the Board of County Commissioner, said property being located generally within a parcel described as follows:

Township 15 North, Range 83 West of the 6th P.M.:
Section 9: E1/2SE1/4 and SW1/4SE1/4

36. Over the course of several years, Rainbow Canyon, Inc. sold various portions of the above said real property to various individuals owning a portion of the shares of said Rainbow Canyon, Inc. The sale and transfer of such property was in violation of applicable Wyoming law relating to platting and/or subdivisions.

37. The Contestants/Petitioners in the Private Road Action obtained title to their land from Rainbow Canyon, Inc. which has failed and/or refused to comply with applicable law including Wyoming statutes relating to platting and subdivisions and the Subdivision Regulations. Rainbow Canyon, Inc. has sold and/or transferred property to individuals involved in the Private Road Action in violation of applicable statutes, rules and/or regulations. The filing of the Private Road Action is not in good faith and as such the action should be barred.

38. The Contestants/Petitioners in the Private Road Action are now the owners of alleged landlocked parcels sold by Rainbow Canyon, Inc. in violation of the applicable statutes and/or regulations. The failure of the Board of Commissioners to enforce the applicable statutes and/or Subdivision Regulations have caused harm and damages to Plaintiffs.

39. The Contestants/Petitioners in the Private Road Action are the principles of Rainbow Canyon, Inc., a private fishing club, and upon information and belief, said Contestants/Petitioners own three of the four outstanding shares of Rainbow Canyon, Inc., and Rainbow Canyon, Inc. is the alter ego of Contestants/Petitioners.

40. Upon information and belief, Contestants/Petitioners in the Private Road Action have used land owned by Rainbow Canyon, Inc. to access their lots and either own or have the ability to obtain the legal right to use lands owned by Rainbow Canyon, Inc. to obtain access to their lots.

41. Rainbow Canyon, Inc. has benefited from its failure/refusal to comply with applicable Subdivision Regulations inasmuch as it has not been required to provide access to the properties it has sold, and now the principles of Rainbow Canyon, Inc. are attempting to have a private road established over the property of R.C.R., Inc. as opposed to having to provide access across its own property.

42. That said Private Road Action would not have been brought if the Contestants/Petitioners alter ego had complied with the statutes and regulations applicable to platting and subdivisions.

43. The Contestants/Petitioners in the Private Road Action would have an outlet or connection with a public road if Rainbow Canyon, Inc. had complied with applicable Subdivision Regulations.

44. The Contestants/Petitioners could have filed for an action for a private road against Rainbow Canyon, Inc., but failed to do so in order to preserve the value of the land owned by their alter ego.

45. That by excluding Rainbow Canyon, Inc. from the Private Road Action, the viewers, if appointed, will be precluded from considering any private roadway which crosses the property owned by Rainbow Canyon, Inc.

46. That the Wyoming Private Road Statutes found at W.S. §24-9-101 *et seq.* is unconstitutional inasmuch as it authorizes an unlawful taking of property for private purpose in violation of the 5th and 14th Amendments to the United States Constitution. In addition, said statutes constitute an unconstitutional delegation of the powers of eminent domain wherein the power is removed from the State and placed into the hands of private citizens.

47. Plaintiff has requested that the Board of Commissioners take action to enforce the applicable platting and/or zoning statutes as well as the Subdivision Regulations. The Board of Commissioners has failed and/or refused to enforce said statutes and require Rainbow Canyon, Inc. to come into compliance with the statutory and regulatory requirements.

48. Plaintiff is without an adequate remedy at law and must therefore file this Complaint in equity demanding that the Board of Commissioners fully enforce the applicable statutes and Subdivision Regulations and require Rainbow Canyon, Inc. to immediately comply with the applicable regulations and statutes.

49. Plaintiffs have been harmed as a result of Defendant's failure to enforce its own rules and regulations.

WHEREFORE, Plaintiffs prays for relief as follows:

1. That the Wyoming Private Road Statutes be declared unconstitutional and unenforceable against the Plaintiffs in this action.

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, LLC

FAX NO. 13077457385

P. 12/19

2. That the Court immediately enter an order prohibiting and enjoining the Board of Commissioners from continuing with the Private Road Action unless and until such time as Rainbow Canyon, Inc., its assigns and transferees have come into full and complete compliance with all applicable statutes, laws, rules and regulations pertaining to platting, zoning and subdivisions.

3. The Court enter its order requiring the Board of Commissioners to take all necessary and proper steps to require Rainbow Canyon, Inc. to comply with the applicable statutes, laws, rules and regulations pertaining to platting, zoning and subdivisions.

4. That the Court immediately enter an order prohibiting and enjoining the Board of Commissioners from proceeding with the Private Road Action until such time as all necessary and proper parties are determined and made a part of the Private Road Action.

5. For such other and additional relief as may be just and proper.

Dated this 12th day of January, 2000.

BROWN, NAGEL, WATERS & HISER, LLC

By: 

Kermit C. Brown
Brown, Nagel, Waters & Hiser, LLC
P.O. Box 971
Laramie, WY 82073-0971
(307) 745-7458
Its Attorneys

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF CARBON COUNTY

STATE OF WYOMING

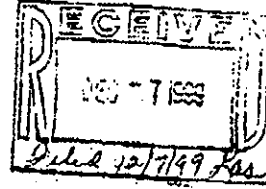
In the matter of the Application
of Robert E. Deline and Annabelle M. Deline;
Gary L. Palmer and Nancy J. Palmer; and
Kirk Company, a Texas partnership;
Applicants for a private road,

Contestants/Petitioners,

vs.

R.C.R., Inc., a Wyoming corporation, and
Alex J. Horst,

Contessees/Respondents



ORDER ADOPTING HEARING OFFICER'S
RECOMMENDED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER
AND ORDER ESTABLISHING A PRIVATE ROAD

The duly-appointed Hearing Officer, Eric A. Easton ("Hearing Officer") having entered his recommended Findings of Fact and Order on the 9th day of November, 1999, and the Carbon County Board of Commissioners ("Board") having reviewed the same and being fully advised, adopts such findings in their entirety and enters this Order Establishing a Private Road consistent with the provisions of W.S. §§ 24-9-101 through 29-9-103 (1999 Ed.), as herein provided.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the recommended Findings of Fact, Conclusions of Law and Order entered by the Hearing Officer, together with all of the rulings and decisions made by the Hearing Officer during the course of these proceedings be, and the same are hereby adopted by the Board.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Report of the Viewers and Appraisers filed herein on June 21, 1999, be and the same is hereby approved, ratified, confirmed and adopted by the Board.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that a private road, 30 feet in width, be and the same is hereby established over and across Section 16 of Township 15 North, Range 83 West of the 6th P.M., as more particularly described on Exhibits "A," "B" and "C," attached hereto and made a part hereof by this reference, which road shall be appurtenant to and for the benefit of those lands described as follows ("Benefitted Lands"):

A tract described as beginning at a point 1310 feet West and 230 feet North of the Southeast Corner, Section Nine (9), Township Fifteen (15) North, Range Eighty-Three (83) West; thence North 30° no minutes, East 225 feet to the right bank of Grand Encampment River; thence South-Westerly along said right bank, 300 feet more or less to the North-West Corner of Lot No. 2, thence South 60° no minutes East along the Northerly line of said Lot No. 2 and said line extended, 200 feet to the point of beginning, comprising 0.5 acre, more or less in the S/2 of the SE/4 of Section Nine (9) Township Fifteen (15) North, Range Eighty-Three (83) West of the Sixth (6th) P.M., in Carbon County, Wyoming.

A tract described as beginning at a point on the South line of Section Nine (9), Township Fifteen (15) North, Range Eighty-Three (83) West, 1405 feet West of the South East Corner thereof; thence North 140 feet; thence West 150 feet to the right bank of the Grand Encampment River; thence Southerly along said right bank 140 feet; thence East 150 feet to the point of beginning, comprising 0.5 acres, more or less, in the S/2 of the SE/4 of Section Nine (9), Township Fifteen (15) North, Range Eighty-Three (83) West of the Sixth (6th) P.M. in Carbon County, Wyoming.

A tract described as beginning at a point 1405 feet West and 140 feet North of the Southeast Corner of Section Nine (9) Township Fifteen (15) North, Range Eighty-Three (83) West; thence North 24°30' East 120 feet; thence North 50°00' West 150 feet to the right bank of the Grand Encampment River; thence Southwesterly along said right bank 204.5 feet more or less to the Northwest corner of Lot Number 1; thence East 150 feet to the point of beginning, comprising 0.5 acre more or less.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Contestants/Petitioners pay to the Carbon County Clerk the sum of Eighteen Thousand Dollars (\$18,000.00) as damages consistent with the Report of Viewers and Appraisers, with the sum of Ten Thousand Five Hundred Forty-Eight Dollars (\$10,548.00) to be remitted by the County Clerk to Alex J. Horst, by sending a check for such amount to his attorney, C. M. "Steve" Aron, and the sum of Seven Thousand Four Hundred Fifty-Two Dollars (\$7,452.00) to be remitted by the County Clerk to R.C.R., Inc., by sending a check for such amount to his attorney, Kermit C. Brown.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon payment of the foregoing amounts, the County Clerk shall record in the Office of the County Clerk and Ex-Officio Register of Deeds the original of this Order and Petitioners/Contestants, their heirs, successors and assigns and all subsequent owners of the Benefitted Lands shall be entitled to possession of the lands described on Exhibits "A," "B" and "C" for the construction, maintenance and use of the private road provided for herein.

DATED this 7th day of December, 1999.

CARBON COUNTY BOARD OF
COMMISSIONERS

By: *Robert J. [Signature]*

Chairman

Copies to:
John A. MacPherson
John R. Vincent
Kermit C. Brown
C. M. "Steve" Aron
Eric Easton

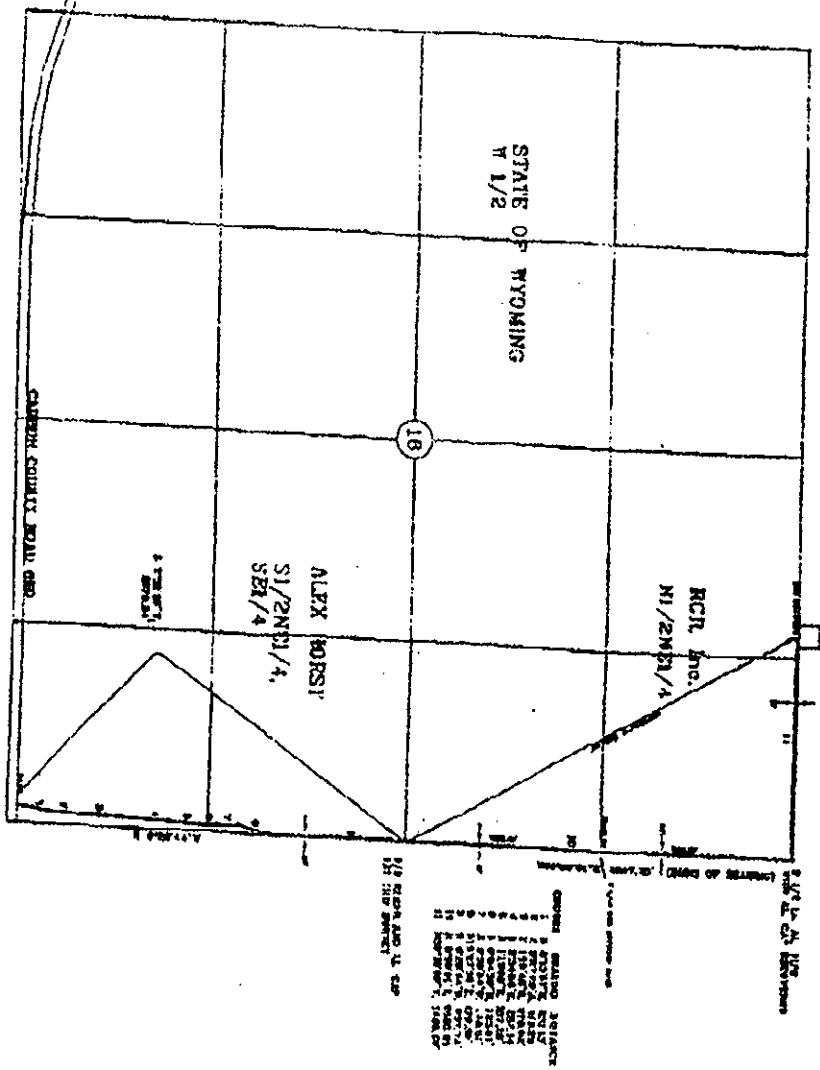


EXHIBIT "A"



ROAD REMOVAL: SUTTER
 SEC. 12, T15N, R10W
 CARBON COUNTY, WYOMING
 FOR
 CARBON COUNTY
 ROAD AND BRIDGE DEPT.

01/17/1995 23:31

13073248117

WKWTLAW

PAGE 16

JAN-14-00 FRI 13:59

B... LLC

FAX NO. 13077457385

P. 17/19

April 12, 1999

Carbon County R&B

Rainbow Canyon Access-RCR, inc

"A 30 ft. strip of land in Sec. 16, T15N, R83W, Carbon County, Wyoming, 15 ft. on each side of the following described centerline:

Beginning at a point on the South line of the North 1/4 of the Northeast quarter of said Sec. 16, 15 ft. West of the Southeast corner of said North 1/4 of the Northeast quarter also known as the North 1/16 corner between sections 15 and 16;

Thence N 0°00'01"E, 1288.62 ft. parallel to and 15.0 ft. West of the East line of said Sec. 16 to a point that is 15.0 ft. West of and 15.0 ft. South of the Northeast corner of said Sec. 16;

Thence N89°33'09"W, 1465.0 ft. parallel to and 15.0 ft. South of the North line of said Sec. 16 to a point that bears N29°36'50"W, 2994.90 ft. from the East 1/4 corner of said Sec. 16, said strip being 2753.62 ft. or 166.87 rods in length, and containing 1.896 acres, more or less."

ROY-THOMAS SMITH & ASSOC
CONSULTING
AND SURVEYORS
Boulder, CO 80501

EXHIBIT "B"

"Modification in any way of the foregoing description is null and void."

JAN-14-00 FRI 13:59

LLC

FAX NO. 13077457385

P. 16/19

April 12, 1999
Carbon County R2B
Rainbow Canyon Access-Horst

"A 30 ft. strip of land in Sec. 16, T15N, R33W, Carbon County, Wyoming, 15 ft. on each side of the following described centerline:

Beginning at a point on the North Right of Way line of Carbon County Road 680 which bears S 2°32'39"W, 2579.54 ft. from the East 1/4 corner of said Sec. 16, said point of beginning being in the center of an existing single lane road:

Thence along the said existing single lane road, N 8°13'57"E, 231.13 ft. to a PI;

Thence along the said existing single lane road, N 3°27'26"E, 119.28 ft. to a PI;

Thence along the said existing single lane road, N 1°15'48"E, 378.92 ft. to a PI;

Thence along the said existing single lane road, N 2°34'56"E, 282.14 ft. to a PI;

Thence along the said existing single lane road, N 1°13'58"E, 187.28 ft. to a PI;

Thence along the said existing single lane road, N 0°54'30"W, 123.51 ft. to a PI;

Thence along the said existing single lane road, N 3°30'34"W, 148.31 ft. to a PI;

Thence leaving the said existing road N16°27'35"E, 179.38 ft. to a point 15.0 ft.

West of the East line of said Sec. 16;

Thence N 0°20'44"W, 937.74 ft. parallel to and 15.0 ft. West of the East line of said Sec. 16 to a point 15.0 ft. West of the East 1/4 corner of said Sec. 16;

Thence N 0°00'01"E, 1303.63 ft. parallel to and 15.0 ft. West of the East line of said Sec. 16 to a point on the North line of the South 1/4 of the Northeast quarter of Sec. 16 that is 15.0 ft. West of Northeast corner of the South 1/4 of the Northeast quarter of said Sec. 16, also known as the N 1/6 corner between sections 15 and 16, said strip being 3891.32 ft. or 235.84 rods in length, and containing 2.680 acres, more or less."

Robert Jack Smith & Assoc.
CONSULTING
LAND SURVEYORS
Rawlins, WY 82021

EXHIBIT "C"

"Include within the boundary of the foregoing description the undisturbed earth of the surveyor."

01/17/1995 23:31 13073248117
JAN-14-00 FRI 14:00 LLC

WKWTLAW

FAX NO. 13077457385.

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P. 19/19

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the 9th day of December, 1999 the foregoing instrument was served by United States Certified Mail to:

Mr. John R. Vincent
Attorney at Law
301 East Adams
Riverton, WY 82501

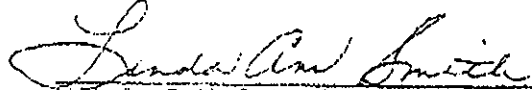
Mr. C.M. "Steve" Aron
Aron & Hennig
1472 North 5th St., Suite 201
Laramie, WY 82072

Kenneth C. Brown
Brown, Nagel, Waters & Hiser, LLC
515 Iverson
P.O. Box 971
Laramie, WY 82073-0971

Mr. Eric A. Easton
Natrona County Legal Department
200 North Center Street
PO Box 2114
Casper, WY 82502-2114

And hand delivered to:

Mr. John A. MacPherson
MacPherson Law Office
410 West Maple Street
PO Box 989
Rawlins, WY 82301
Presented to Joche Schiltz


Linda Ann Smith, Carbon County Clerk

Mailed by: SSA

IN THE DISTRICT COURT, SECOND JUDICIAL DISTRICT, IN AND
FOR CARBON COUNTY, WYOMING

R.C.R., INC., a Wyoming
Corporation; JON R. GRAY AND
MARTHA K. GRAY,

Plaintiffs,

vs.

ROBERT E. DELINE AND
ANNABELLE M. DELINE; GARY L.
PALMER AND NANCY J. PALMER;
KIRK COMPANY, A TEXAS
PARTNERSHIP; ALEX J. HORST;
AND BOARD OF COUNTY
COMMISSIONERS, CARBON
COUNTY, WYOMING, ARTLIN
ZEIGER, LINDA FLEMING AND
LEE MEACHAM in their official
capacities as members of the Board
of County Commissioners, Carbon
County, Wyoming.

Defendants.

STATE OF WYOMING
COUNTY OF CARBON
FILED

JAN 18 2000

LINDY L. SCHMIDT
CLERK OF DISTRICT COURT

BY DEPUTY

Civil Action No. CV-

MOTION FOR PEREMPTORY DISQUALIFICATION OF JUDGE

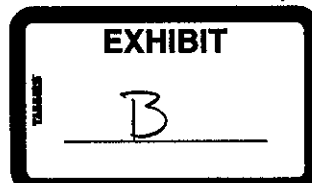
Plaintiffs, R.C.R., Inc., Jon R. Gray and Martha K. Gray, by and through counsel, pursuant to Rule 40.1(b) W.R.C.P., hereby makes its motion requesting that the Honorable Kenneth E. Stebner be peremptorily disqualified from acting in the captioned case.

Dated this 12th day of January, 2000.

BROWN, NAGEL, WATERS & HISER, LLC

By: *Kenneth C. Brown*
Kenneth C. Brown
Brown, Nagel, Waters & Hiser, LLC
P.O. Box 971
Laramie, WY 82073-0971
(307) 745-7458
Its Attorneys

2/8/
1:45-



STATE OF WYOMING)
 : ss.
COUNTY OF CARBON)

IN THE DISTRICT COURT
SECOND JUDICIAL DISTRICT

R.C.R., INC., a Wyoming
Corporation; JON R. GRAY and
MARTHA K. GRAY,

Plaintiffs,

vs.

CV-00-0012

ROBERT E. DELINE and
ANNABELLE M. DELINE;
GARY L. PALMER and NANCY
J. PALMER; KIRK COMPANY,
A TEXAS PARTNERSHIP; ALEX
J. HORST; and BOARD OF COUNTY
COMMISSIONERS, CARBON COUNTY,
WYOMING, ARTLIN ZEIGER, LINDA
FLEMING and LEE MEACHAM in their
official capacities as members of the Board
of County Commissioners, Carbon County,
Wyoming,

Defendants.

STATE OF WYOMING)
COUNTY OF CARBON) ss.
FILED

JAN 25 2000

LINDY L. SCHMIDT
CLERK OF DISTRICT COURT

BY SNO
DEPUTY

NOTICE OF SETTING

Notice is hereby given that the above-captioned matter is scheduled for a hearing on the
Motion for Peremptory Disqualification of Judge for Tuesday, February 8, 2000 at 1:45
o'clock p.m., in the District Court, Courthouse Building, Rawlins, Wyoming.

DATED this 25 day of January, 2000.

Sheri Shullinger
JUDICIAL ASSISTANT

Copies:
Kermit C. Brown

EXHIBIT